

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6154

PETITION OF TIMOTHY GARDNER
(Hearing held September 27, 2006)

OPINION OF THE BOARD
(Effective date of Opinion, November 16, 2006)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(a). The petitioner proposes the construction of a new single-family dwelling that requires a variance of 5.50 feet as it within twenty-eight (28) feet of the established front building line (79th Place). The required established building line is 33.50 feet.

Thomas Manion and David Hammer, architects, appeared with the petitioner of the public hearing.

The subject property is Lot 19, Cabin John Subdivision, located at 79th Place, Cabin John, Maryland, 20818, in the R-90 Zone.

Decision of the Board: Requested variance **denied.**

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a new single-family dwelling.
2. Mr. Manion testified that this section of the County was originally zoned as R-60 and that it was down-zoned to R-90, and that new construction must meet the standards in Section 59-B-5.1 of the Montgomery County Zoning Ordinance.

“Sec. 59-B-5.1. Buildable lot under previous ordinance.

Any lot that was recorded by subdivision plat prior to June 1, 1958, or any lot recorded by deed prior to June 1, 1958 that does not include parts of previously platted properties, and that was a buildable lot under the law in effect immediately before June 1, 1958, is a buildable lot for building a one-family dwelling only, even though the lot may have less than the minimum area

for any residential zone. Any such lot may be developed under the zoning development standards in effect when the lot was recorded . . .”

3. Mr. Manion testified that the lot was recorded in 1938, but does not have a house on it. Mr. Manion testified that the subject property has a fairly dramatic slope and that the lot fronts on two streets: 80th Street, at its western rear yard boundary; and 79th Place, at its eastern front yard boundary. Mr. Manion testified that the lot must meet established building lines from both streets and that this results in a long sliver-like buildable envelope. Mr. Manion testified that the lot’s buildable area at its widest point in the southern side yard will be 18 feet in depth and 30 feet in depth in the northern side yard, with a 1,800 square foot buildable envelope.
4. Mr. Manion testified that the proposed house would be in-line and in scale with the other homes to the north of the subject property that are on 79th Place and that most of the homes along the street are sited at 28 feet from the street. Mr. Manion testified that the subject property has less of a buildable envelope than the neighboring lots and that house, as proposed, would be in harmony with the other homes along the street. The subject property is 10,087 square feet. See Exhibit No. 4(a) site plan/existing and proposed setbacks].

FINDINGS OF THE BOARD

Based upon the petitioner’s binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the subject property exceeds the minimum lot size for the zone and that the application of the established building lines while it reduces the buildable envelope, it still permits the development of a single-family house on the lot. The Board finds that although the lot’s buildable envelope would be irregularly shaped, any “uniqueness” or “peculiarity” caused by the shape of the lot does not constitute “conditions peculiar to a specific parcel of

property” of such a severity that the Board may grant the requested variance.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of 5.50 feet from the required 33.50 foot established front building line for the construction of a new single-family dwelling is denied.

The Board adopted the following Resolution:

On a motion by Donna L. Barron, seconded by Allison Ishihara Fultz, Chair, with Angelo M. Caputo, Wendell M. Holloway and Caryn L. Hines, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 16th day of November, 2006.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

